I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: December 9, 2008
Electronic Signature for Dena H. Tuchman: /Dena H. Tuchman/

Docket No.: 61904A US
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Zoltan L. Benko, David A. Demeter, Carl Deamicis, Lowell Markley, Jack G. Samaritoni, Carrie Schmidt, Yuanming Zhu, William R. Erickson, Peter Anzeveno, B., James Pechacek, Gerald B. Watson, Gerrit Deboer, Joel J. Sheets, Susan Zabik, Carla N. Yerkes, Christian Schobert, James E. Dripps, Leonard Dintenfass, Laura L. Karr, Paul A. Neese, Jim X. Huang, and James M. Gifford

Application No.: 10/535,653 Confirmation No.: 1637

Filed: May 19, 2005 Art Unit: 1626

For: COMPOUNDS USEFUL AS PESTICIDES Examiner: J. L. Coppins

AMENDMENT IN RESPONSE TO NON-FINAL OFFICE ACTION

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

In response to the Office Action dated June 10, 2008, please amend the above-identified U.S. patent application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 4 of this paper.

AMENDMENTS TO THE CLAIMS

1. (Currently Amended) A compound having the following formula

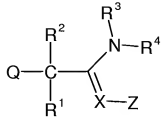

Figure One

wherein

Q can be any five- or six membered ~~carbocyclic or~~ heterocyclic ring,

X is N, CR, COR, CSO_nR (where n = 0, 1, or 2), $CN(R)_2$, C(C=O)R, C(C=S)R, C(C=NR)R, $CP(=O)_m(R)_2$ (where m = 0 or 1), or $CP(=S)_m(R)_2$ (where m = 0 or 1),

wherein each R independently can be

(a) a $C_{1\text{-}10}$, branched or unbranched, alkyl, alkoxy, alkenyl, alkynyl, alkylthio, alkylsulfinyl, alkylsulfonyl, alkylcarbonyl, alkylcarbonothioyl, alkoxycarbonyl, alkylthiocarbonyl, alkoxycarbonothioyl, alkylthiocarbonothioyl, or HC(=NH)-,

(b) a $C_{3\text{-}10}$, cycloalkyl, or cycloalkenyl,

(c) an aryl, heterocyclyl, aryloxy, heterocyclyloxy, arylthio, heterocyclylthio, arylamino, or heterocyclylamino, or

(d) a hydro, hydroxy, mercapto, amino, cyano, formyl, nitro, halo, or aminocarbonyl,

Z is CN or NO_2,

R^1 and R^2 each independently can be

(a) a $C_{1\text{-}10}$, branched or unbranched, alkyl, alkoxy, alkenyl, alkynyl, alkylthio, alkylsulfinyl, alkylsulfonyl, alkylcarbonyl, alkylcarbonothioyl, alkoxycarbonyl, alkylthiocarbonyl, alkoxycarbonothioyl, alkylthiocarbonothioyl, or HC(=NH)-,

(b) a $C_{3\text{-}10}$, cycloalkyl, or cycloalkenyl,

(c) an aryl, heterocyclyl, aryloxy, heterocyclyloxy, arylthio, heterocyclylthio, arylamino, or heterocyclylamino, or

(d) a hydro, hydroxy, mercapto, amino, cyano, formyl, nitro, halo, or aminocarbonyl,

R^1 and R^2 can optionally be linked together with either a bond or a chain of 1-4 atoms, where such atoms can be carbon, nitrogen, sulfur, phosphorus and oxygen,

R^3 and R^4 each independently can be,

(a) a $C_{1\text{-}10}$, branched or unbranched, alkyl, alkoxy, alkenyl, alkynyl, alkylthio, alkylsulfinyl, alkylsulfonyl, alkylcarbonyl, alkylcarbonothioyl, alkoxycarbonyl, alkylthiocarbonyl, alkoxycarbonothioyl, alkylthiocarbonothioyl, or HC(=NH)-,

(b) a $C_{3\text{-}10}$, cycloalkyl, or cycloalkenyl,

(c) an aryl, heterocyclyl, aryloxy, heterocyclyloxy, arylthio, heterocyclylthio, arylamino, or heterocyclylamino, or

(d) a hydro, hydroxy, mercapto, amino, cyano, formyl, nitro, halo, or aminocarbonyl,

R^2 and R^3 can optionally be linked together with a chain of 1-4 atoms, where such atoms can be carbon, nitrogen, sulfur, phosphorus and oxygen,
R^3 and R^4 can optionally be linked together with a chain of 1-4 atoms, where such atoms can be carbon, nitrogen, sulfur, phosphorus and oxygen,

Each member of Q, X, R, R^1, R^2, R^3, and R^4, which may have a hydrogen atom in a certain position, may instead of having such hydrogen atom, have a,

(a) a C_{1-10}, branched or unbranched, alkyl, alkoxy, alkenyl, alkynyl, alkylthio, alkylsulfinyl, alkylsulfonyl, alkylcarbonyl, alkylcarbonothioyl, alkoxycarbonyl, alkylthiocarbonyl, alkoxycarbonothioyl, alkylthiocarbonothioyl, HC(=NH)-, dialkylphosphonyl, or dialkylphosphatyl,

(b) a C_{3-10}, cycloalkyl, or cycloalkenyl,

(c) an aryl, heterocyclyl, aryloxy, heterocyclyloxy, arylthio, heterocyclylthio, arylamino, or heterocyclylamino, or

(d) a hydro, hydroxy, mercapto, amino, cyano, formyl, nitro, halo, or aminocarbonyl, in such position.

2. (Previously presented) A composition comprising a compound according to claim 1 and a phytologically-acceptable inert carrier.

3. (Canceled)

4. (Canceled)

5. (Canceled)

6. (Canceled)

REMARKS

A petition for extension of time under 37 CFR 1.136 (a) is included with this Amendment and authorizes The Office to charge deposit account No. 04-1529 in the name of Dow AgroSciences LLC, the necessary fee under 37 CFR §1.17(c) for a three month extension of time. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1529, under Order No. 61904A US.

Amendment to the Claims

Claim 1 is currently amended in response to the Examiner's rejection of Claim 1 under 35 U.S.C. § 102(b). Applicants reserve the right to pursue the subject matter removed as a result of the amendment in one or more subsequent Divisional applications. In view of this amendment, Applicant submits that the two claims currently pending in this application are in condition for allowance.

Rejection under 35 U.S.C. § 102(b)

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by the CAPLUS abstract of Auwers, K. *et al.*, Accession No. 1932:11638. The Examiner noted that Auwers *et al.* disclose a compound which is the same as a species in Applicant's claimed genus when Q is phenyl, R^1, R^2, R^3, and R^4 are all hydrogen; X is C(C=O)R wherein R is ethoxy; and Z is CN.

Applicant wishes to point out that the Auwers abstract does not provide an experimental section, and therefore does not disclose typical physical data such as melting point or elemental analyses to clearly establish the true identity of the reported compounds.

Presumably, the compounds were made according to methods described by Thorpe *et al.* 28 years earlier which are referenced in the abstract. Thorpe believed the compounds to be in the imino tautomeric form while the subject of the Auwers abstract, established only by spectrometric methods, is that Compound 3 is in the enamine form. Most importantly, the spectral data presented in the Auwers abstract is insufficient to conclude they produced the same material as Thorpe. The net effect is that technically there is no preparation described for Compound 3 in the prior art.

This fact taken in light of well established patent law requiring that a prior art reference under §102(b), must be enabling leaves some doubt about the strength of the current rejection. Paperless Accounting, Inc. v. Bay area Rapid Transit Sys., 221 USPQ 649, 653 (Fed. Cir 1986), cert. denied, 480 U.S. 933 (1987).

Notwithstanding and in the spirit of furthering the prosecution of this application, Applicant herein amends Claim 1 by removing "carbocyclic" from the definition of substituent Q. Basis for the amendment is found through the specification, particularly in paragraph 4 and the Examples. In view of the amendment, Claim 1 no longer includes compounds wherein Q is phenyl. Therefore Applicant respectfully asserts that the amendment overcomes the rejection of Claim 1 as being anticipated by Auwers, K. *et al.* under 35 U.S.C. § 102(b), and respectfully requests the Examiner to withdraw the rejection of Claim 1 under 35 U.S.C. § 102(b).

Claim Objections

Claim 2 is objected to as being dependent on a rejected base claim. Because Applicant has amended the base claim and has urged the Examiner to remove the rejection of the

base claim in light of the amendment, Applicant respectfully asserts that the objection to Claim 2 should be withdrawn.

In view of the amendment and remarks presented with this response, it is urged that the rejection and objection of record are overcome and the present application is in condition for allowance. Favorable consideration of this application is requested.

December 9, 2008

Respectfully submitted,

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